



**NEW YORK STATE
OFFICE OF INDIGENT LEGAL SERVICES
COUNTY LAW ARTICLE 18-B ASSIGNED COUNSEL RATE INCREASE
CERTIFICATION FORM
FAQs**

1. Question: What is the new assigned counsel hourly rate?

Answer: The new assigned counsel hourly rate is \$158 per hour for all types of legal representation under County Law Article 18-B. This is an increase of \$98/hour for misdemeanors and other lesser offenses (formerly the rate was \$60/hour), and \$83/hour for felonies, appeals, and Family Court matters (formerly the rate was \$75/hour).

2. Question: Where can I find legal authority for the assigned counsel hourly rate increase?

Answer: The legal authority for the assigned counsel rate increase is found in the Education, Labor, and Family Assistance Article VII Bill of the FY 2023-24 State Budget ([A.3006-C/S.4006-C](#)), Part GG, which amends County Law § 722-b to increase the hourly rate paid to assigned counsel attorneys.

3. Question: When did the increased rate go into effect?

Answer: The new rate is effective as of April 1, 2023.

4. Question: Who pays for the increased rate?

Answer: Under County Law § 722-e, counties¹ pay for assigned counsel hourly fees. However, the State has appropriated \$92 million to the ILS Aid to Localities budget to reimburse counties for 50% of the rate increase (i.e., \$49/hour for misdemeanors and \$41.50/hour for all other matters under County Law Article 18-B).

5. Question: How do I claim State reimbursement for 50% of the assigned counsel rate increase?

¹ For purpose of this document, the term “counties” includes New York City.

Answer: To claim the 50% State reimbursement of the assigned counsel rate increase, counties must submit to ILS on a quarterly basis the following: 1) a County Law Article 18-B Assigned Counsel Rate Increase form; 2) a Claim for Payment form; and 3) Source Documentation. Below is more information about each:

County Law Article 18-B Assigned Counsel Rate Increase Certification form (“Certification form”): The Certification form requires counties to report and certify eligible expenditures by the number of hours paid to assigned counsel at the statutory rate during the reporting period in these three categories: 1) misdemeanors; 2) felonies and criminal appeals; and 3) Family Court and Family Court appeals. ILS has disseminated instructions for completion of the form.

Claim for Payment form: Counties submit this form as part of all claims for reimbursement to ILS. As a result, this form is familiar to counties.

Source Documentation: This is documentation supporting the eligible expenditures claimed. Counties may submit copies of all attorney vouchers underlying the expenditures claimed, or alternatively, a report summarizing the relevant information in vouchers. Counties which use an electronic voucher system should have the capacity to produce such a report. The Onondaga County Bar Association Assigned Counsel Program has provided ILS with a sample report that can serve as acceptable Source Documentation. To obtain a copy of this report, please contact Burton Phillips at burton.phillips@ils.ny.gov.

6. Question: Why do counties have to submit Source Documentation to ILS?

Answer: Sound fiscal policy requires that claimants be able to justify the fiscal basis of their claims for State funding. See, generally the New York State Office of State Comptroller (OSC), *Guide to Financial Operations*.

OSC has advised ILS that we are expected to collect the Source Documentation described above with each claim. ILS has proposed to OSC that counties instead be required to maintain for six years accurate and thorough records of the sources of their claims for State reimbursement of 50% of the assigned counsel rate increase (i.e., maintain attorney vouchers underlying the claims for this funding), subject to periodic audit by ILS, OSC, or both. To date, OSC has not agreed to ILS’ proposed alternative, but ILS will continue to impress upon OSC the advantages of this proposed alternative. If at some point, OSC does agree to this proposed alternative, ILS will immediately notify counties.

7. Question: What type of payments to assigned counsel attorneys are eligible for reimbursement under this appropriation of State funding?

Answer: Only payments to assigned counsel attorneys for legal representation under County Law Article 18-B paid at the statutory hourly rate are eligible for reimbursement under this funding. This includes time spent providing representation on assigned cases, time providing representation at arraignments paid at the statutory hourly rate, time serving as a second chair on cases, and travel time when paid at the statutory hourly rate.

Counties should not report expenditures for Mentor and Resource Attorney programs or payments to assigned counsel attorneys that are not paid at the statutory hourly rate (for example, a set amount per arraignment session or to be on-call to provide arraignment representation). Counties may have other sources of ILS funding for which they can receive reimbursement for these expenditures.

Nor should counties report expenditures not related to attorney time. This includes expenses such as copying, postage, mileage, parking, and other case-related expenses.

Finally, counties should not report expenditures for non-attorney specialized services, such as payments to investigators, interpreters, and other experts.

8. **Question:** What are the implications of the 18-B assigned counsel rate increase reimbursement for claiming on other ILS contracts, such as the Statewide Expansion of Hurrell-Harring contract?

Answer: Under the \$92 million appropriation for increased assigned counsel rates, counties can claim for all expenditures for assigned counsel time paid at the statutory hourly rate to receive reimbursement for the State portion of the increase. The State portion of the assigned counsel rate increase is \$49/hour for misdemeanors and \$41.50/hour for all other matters. If the county has a source of funding on an ILS contract for the county portion of the assigned counsel attorney hourly payments (\$109/hour for misdemeanors and \$116.50/hour for all other matters), the county may claim that on the ILS contract.

Please note that, whether or not a county has claimed for reimbursement of the State portion of the assigned counsel rate increase, ILS will only reimburse counties for the county portion of expenditures for assigned counsel time paid at the statutory rate – i.e., \$109/hour for misdemeanors and \$116.50/hour for all other matters.

Below is an example:

Example 1: County X's Statewide Expansion of Hurrell-Harring contract includes a \$20,000 budget line for a Second Chair program, with second chair attorneys to be paid at the statutory rate. During the first quarter of FY 2023-24 (April 1-June 30), County X paid assigned attorneys for a total

of 10 hours to work on felony cases as second chair attorneys. County X should claim the State's portion of this 10 hours in the Certification form to be reimbursed \$415 (10 hours x \$41.50). County X should also submit a claim on its ILS Statewide Expansion of Hurrell-Harring contract for reimbursement of the \$1,165 county portion of these expenditures (10 hours x \$116.50).

- 9. Question:** The Certification form requires counties to provide expenditure information in three categories: 1) Misdemeanors; 2) Felonies and Criminal Appeals; and 3) Family Court and Family Court Appeals. In which category should counties include expenditures for representation on parole revocation matters and other matters not specifically listed on this form?

Answer: Any representation that falls within County Law Article 18-B that is paid at the increased hourly rate for representation provided on or after April 1, 2023 can be claimed. If the matter is criminal, and the hourly rate was \$60 per hour prior to the rate increase, it should be claimed in the Misdemeanors category; if it was criminal and the hourly rate was \$75 per hour prior to the rate increase, it should be claimed in the Felonies and Criminal Appeals category; and if it is a Family Court matter paid at the hourly rate, it should be claimed in the Family Court and Family Court Appeals category.

Because assigned counsel attorneys were paid \$75 per hour for representation on parole revocation matters prior to the April 1, 2023 rate increase, expenditures for representation on these matters on or after April 1, 2023 should be included in the Felonies and Criminal Appeals category.

- 10. Question:** The Instructions for the Certification Form quote the State budget appropriation language to indicate that claimed costs "must be submitted" to ILS "on a quarterly basis, and within 12 months of which the expenditures were incurred." Please clarify what this means. Is this within 12 months of the county paying the attorney? Or is it within 12 months of the date the attorney representation was provided?

Answer: In answering this question it's important to note two things. First, the State reimbursement for the increased assigned counsel rate is only for assigned counsel attorney time for work performed on or after April 1, 2023 at the \$158 per hour rate. Second, for State reimbursement of 50% of the assigned counsel rate increase, the relevant trigger date for the 12-month claiming deadline is the date the county paid the assigned counsel attorney.

Though the appropriation language for the \$92 million is inartful, ILS interprets it as requiring counties to claim State reimbursement within 12 months of the end

of the fiscal quarter in which the county paid the assigned counsel attorney. So, for example, if a county paid an assigned counsel attorney at the \$158 per hour rate on June 1, 2023 (for work performed on or after April 1, 2023), the county would have 12 months from the end of the fiscal quarter (June 30, 2023) to submit the Certification to ILS for payment (i.e., until June 30 2024).

To ensure timely reimbursement, demonstrate the continuing need for this source of State funding, and because the \$92 million appropriation is capped, ILS urges counties to not wait 12 months to submit the Certifications to ILS.

11. Question: In our county, assigned counsel attorneys are assigned to represent incarcerated people on administrative appeals to the parole board of a denial of parole. Our county then seeks reimbursement for this representation by submitting a claim to the Division of Criminal Justice Services (DCJS) under the Indigent Parolee Program (IPP). How does this reimbursement through the IPP impact a county's claim to ILS for reimbursement of 50% of the assigned counsel rate increase?

Answer: The ILS Certification form notes that the person signing it on behalf of the county is certifying that the county is not seeking reimbursement from any other sources for the expenditures claimed on the form. Counties that receive any other source of funding for representation provided under County Law Article 18-B should develop protocols to ensure that they do not seek reimbursement from other sources for the expenditures claimed in the Certification form. These protocols must be designed to ensure that the county is not violating the certification on the Certification form by seeking reimbursement from two sources for the same expenditures.